

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

CARPENTERS HEALTH AND SECURITY
TRUST OF WESTERN WASHINGTON;
CARPENTERS RETIREMENT TRUST OF
WESTERN WASHINGTON; and
CARPENTERS-EMPLOYERS
APPRENTICESHIP AND TRAINING TRUST
OF WESTERN WASHINGTON,

Case No. 3:18-cv-05952

**COMPLAINT FOR MONETARY
DAMAGES AND FOR EQUITABLE
RELIEF**

Plaintiffs,

V.

**COMMERCIAL INSULATION SERVICE,
LLC, a Washington limited liability company,**

Defendant.

I. PARTIES

1.1 Plaintiff Carpenters Health and Security Trust of Western Washington (“Carpenters Health Trust”) is a Taft-Hartley trust fund established for the purpose of providing and maintaining hospital, medical, dental, vision, disability or death benefits and any other similar benefits, or any combination thereof as the Trustees may determine in their discretion for the benefit of the Employees and their beneficiaries. The Carpenters Health Trust maintains its principal office in Seattle, King County, Washington.

**COMPLAINT FOR MONETARY DAMAGES AND FOR
EQUITABLE RELIEF – 1**
3:18-cv-05952

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1 1.2 Plaintiff Carpenters Retirement Trust of Western Washington (“Carpenters
2 Retirement Trust”) is a Taft-Hartley trust fund created for the purpose of providing
3 retirement and associated death benefits for employees and their beneficiaries. The
4 Carpenters Retirement Trust maintains its principal office in Seattle, King County,
5 Washington.

6 1.3 Plaintiff Carpenters-Employers Apprenticeship and Training Trust Fund of
7 Western Washington (“Carpenters Apprenticeship Trust”) is a Taft-Hartley trust fund
8 created for the purpose of defraying, in whole or in part, costs of apprenticeship or other
9 training programs for the education of apprentices and journeymen carpenters. The
10 Carpenters Apprenticeship Trust maintains its principal office in Seattle, King County,
11 Washington.

12 1.4 The Plaintiffs are commonly referred to collectively as the Carpenters Trusts
13 of Western Washington (the “Carpenters Trusts”).

14 1.5 Defendant Commercial Insulation Service, LLC (“CIS”) is a Washington
15 limited liability company with its principal place of business in Tumwater, Thurston County,
16 Washington.

17 **II. JURISDICTION AND VENUE**

18 2.1 This Court has exclusive jurisdiction pursuant to §502(e)(1) of the Employee
19 Retirement Income Security Act of 1974 (“ERISA”), codified at 29 U.S.C. §1132(e)(1).

20 2.2 Venue in this Court is proper pursuant to §502(e)(2) ERISA, codified at 29
21 U.S.C. §1132(e)(2), and pursuant to agreement between the parties.
22
23

III. FACTS

3.1 On or about March 31, 2006, George Drabner, identifying himself as "V.P." executed a Compliance Agreement on behalf of Commercial Insulation Services, LLC with the Pacific Northwest Regional Council of Carpenters (the "Union"). The Compliance Agreement incorporates by reference the terms and conditions of the *Agreement for the Wall & Ceiling Industry between the Pacific Northwest Regional Council of Carpenters and Members of the Northwest Wall & Ceiling Contractors Association and Others*, effective June 1, 2004 (the "Master Labor Agreement"):

DESIGNATED LABOR AGREEMENT: The employer adopts and agrees to abide by the following Labor Agreement(s):

Wall & Ceiling W. WA between the Employers represented by NW Wall & Ceiling Contractors Assn. and the Regional Council. Current version effective June 1, 2004 through May 31, 2007.

3.2 The Master Labor Agreement contains an evergreen clause, which renews the agreement annually until a successor agreement is negotiated or the signatory employer gives notice of termination. The Master Labor Agreement in effect is the *Agreement between The Pacific Northwest Regional Council of Carpenters and Northwest Wall & Ceiling Contractors Association*, effective June 1, 2016.

3.3 By signing the Compliance Agreement, CIS agreed to make fringe benefit contributions to the Carpenters Trusts and be bound by the terms and conditions of their respective trust agreements:

3. TRUST FUND OBLIGATIONS: The undersigned Employer hereby becomes a party to the applicable Trust Agreements for the trust funds or their successors identified in the designated Labor Agreement. The Employer agrees to be bound by the written provisions and procedures of said Trust Agreements, and any present or future amendments, and to any successor Trust Agreements.

1 Employer accepts as its lawful representatives, the employer trustees
2 who are now or who may hereafter serve on the Board of Trustees of
the respective Trusts as determined by the Trust Agreements.

3 3.4 Prompt payment of wages and fringe benefit contributions is an essential
4 term of the Compliance Agreement.

5 3.5 The Carpenters Trusts are beneficiaries under the terms of the Compliance
6 Agreement and the Master Labor Agreement.

7 3.6 By executing the Compliance Agreement, as discussed above, CIS agreed to
8 the terms of the (i) Carpenters Health & Security Trust of Western Washington; (ii)
9 Carpenters Retirement Trust of Western Washington; and (iii) Carpenters-Employers
10 Apprenticeship and Training Trust of Western Washington.

11 3.7 CIS's obligations under the Carpenters Health Trust are set forth in Article II,
12 Sections 8 – 13, and Article IV, Section 17 of the Revised Trust Agreement of the
13 Carpenters Health and Security Trust of Western Washington, dated January 1, 1998, and as
14 amended. Under the Carpenters Health Trust, CIS agreed to, among other things:

- 15 ▪ Submit its reports on or before the 15th day of the calendar month
16 following the month in which the contributions are payable, even if
the company had no employees for that period of time;
- 17 ▪ Comply with a request to submit any information, data, report or other
18 documents reasonably relevant to and suitable for purposes of
administration of the trust, as requested by the trust funds;
- 19 ▪ Payment of liquidated damages of twelve percent (12%) on all
20 delinquent contributions;
- 21 ▪ Payment of interest of not less than seven percent (7%), nor more than
22 eighteen percent (18%); and
- 23 ▪ Payment of the trust fund's attorney fees, costs of collection, and
 auditor's fees.

1 3.8 CIS's obligations under the Carpenters Retirement Trust are set forth in
 2 Article II, Sections 8 – 13, and Article IV, Section 17 of the Revised Trust Agreement of the
 3 Carpenters Retirement Trust of Western Washington, dated January 1, 1998, and as
 4 amended. Under the Carpenters Retirement Trust, CIS agreed to, among other things:

- 5 ▪ Submit its reports on or before the due date specified in the trust
 agreement or as set by the trustees, even if the company had no
 employees for that period of time;
- 6 ▪ Comply with a request to submit any information, data, report or other
 documents reasonably relevant to and suitable for purposes of
 administration of the trust, as requested by the trust funds;
- 7 ▪ Payment of liquidated damages of twelve percent (12%) on all
 delinquent contributions;
- 8 ▪ Payment of interest of not less than seven percent (7%), nor more than
 eighteen percent (18%); and
- 9 ▪ Payment of the trust fund's attorney fees, costs of collection, and
 auditor's fees.

10 3.9 CIS's obligations under the Carpenters Apprenticeship Trust are set forth in
 11 Article II, Sections 8 – 13, and Article IV, Section 17 of the Revised Trust Agreement of
 12 Carpenters-Employers Apprenticeship and Training Trust Fund of Western Washington,
 13 dated January 1, 1998, and as amended. Under the Carpenters Apprenticeship Trust, CIS
 14 agreed to, among other things:

- 15 ▪ Submit its reports on or before the due date specified in the trust
 agreement or as set by the trustees, even if the company had no
 employees for that period of time;
- 16 ▪ Comply with a request to submit any information, data, report or other
 documents reasonably relevant to and suitable for purposes of
 administration of the trust, as requested by the trust funds;
- 17 ▪ Payment of liquidated damages of twelve percent (12%) on all
 delinquent contributions;

- 1 ▪ Payment of interest of not less than seven percent (7%), nor more than
2 eighteen percent (18%); and
3 ▪ Payment of the trust fund's attorney fees, costs of collection, and
4 auditor's fees.

5 3.10 Upon information and belief, following execution of the Compliance
6 Agreements, CIS used employees to perform work subject to the Master Labor Agreement.
7 CIS also began its monthly reporting and payment of fringe benefit contributions to the
8 Carpenters Trusts.

9 3.11 CIS submitted its monthly contributions reports to the Carpenters Trusts.
10 However upon information and belief, CIS did not fully and accurately report all hours
11 worked by its covered employees.

12 3.12 Based upon an investigation by the Union, and upon information and belief,
13 CIS was not properly paying overtime to its employees. Rather, CIS was compensating
14 employees for overtime hours worked under the guise of lump sum reimbursements for
15 “Reimbursement Auto” expenses. At least 21 CIS employees were compensated in this
16 manner for overtime hours, for a total of 2,626.16 hours worked during 2015 through 2017.
17 CIS did not report these overtime hours to the Carpenters Trusts, nor did CIS pay fringe
18 benefit contributions which – under the terms of the labor and trust agreements to which it is
19 a party – require fringe benefit contributions for each hour of overtime worked by its
20 employees. Based on the applicable contribution rates in effect, CIS owes \$37,698.72 in
21 fringe benefit contributions for the period January 1, 2015 through December 31, 2017 on
22 the Carpenters Trusts’ unreported overtime claim.

23 3.13 Based upon an investigation by the Union, and upon information and belief,
24 CIS was improperly characterizing at least one employee as an apprentice when he was not

1 enrolled in the apprenticeship program. Under the terms of the master labor agreement,
 2 apprentices not formally enrolled in the apprenticeship program in the State of Washington
 3 are to be reported and paid as journeymen, not apprentices. Upon information and belief, at
 4 least one employee was misreported as an apprentice, for a total of 372.50 hours worked
 5 during 2015 through 2017. Based on the applicable contribution rates in effect, CIS owes
 6 \$5,684.35 in fringe benefit contributions for the period January 1, 2015 through December
 7 31, 2017 on the Carpenters Trusts' misclassified apprenticeship claim.

8 3.14 As of the date of this complaint, CIS owes the Carpenters Trusts \$58,454.74,
 9 consisting of \$43,383.07 in fringe benefit contributions for the period January 1, 2015
 10 through December 31, 2017, \$5,205.96 in liquidated damages, at least \$9,865.71 in
 11 prejudgment interest through the date of this complaint, plus other ancillary charges
 12 including audit fees, attorney fees, and costs of collection.

13 **IV. CAUSES OF ACTION**

14 **First Cause of Action**
 15 **(Breach of Labor Agreement/Trust Agreement)**

16 4.1 The Carpenters Trusts reallege each and every allegation contained in ¶¶3.1 –
 17 3.14 above.

18 4.2 CIS's failure to properly report and pay fringe benefit contributions
 19 constitutes breaches of the terms of the Compliance Agreement and the Master Labor
 20 Agreement between the Union and CIS, to which the Carpenters Trusts are beneficiaries.
 21 CIS's failure to fully report and pay fringe benefit contributions also constitutes breaches of
 22 the Trust Agreements, the terms of which CIS agreed to when it signed the Compliance
 23 Agreement.

4.3 As a result of CIS's breach, the Carpenters Trusts have been damaged in an amount to be proven at trial, but not less than \$43,383.07, plus liquidated damages and other ancillary charges including prejudgment interest, attorney fees, and costs of collection.

4.4 The Carpenters Trusts' damages may be continuing.

Second Cause of Action (Violation of ERISA)

4.5 The Carpenters Trusts reallege each and every allegation contained in ¶¶3.1 – 3.14 above.

4.6 CIS's failure to report and pay fringe benefit contributions constitutes a violation of §503(a)(3), §515 ERISA, codified at 29 U.S.C. §1132(a)(3), §1145.

4.7 As a result of CIS's violation, the Carpenters Trusts have been damaged in an amount to be proven at trial, but not less than \$43,383.07, plus liquidated damages and other ancillary charges including prejudgment interest, attorney fees, and costs of collection.

4.8 The Carpenters Trusts' damages may be continuing.

Third Cause of Action (Equitable Relief under ERISA)

4.9 The Carpenters Trusts reallege each and every allegation contained in ¶¶3.1 – 3.14 above.

4.10 CIS's actions, which the Carpenters Trusts allege violate the terms of the labor and trust agreements to which CIS is a party, as well as violate 29 U.S.C. §1145, are causing the Carpenters Trusts damages. The Carpenters Trusts' damages, caused by CIS's actions, may be continuing.

4.11 CIS's actions justify the imposition of injunctive or other equitable relief under ERISA, 29 U.S.C. §1132(a)(3).

V. REQUESTED RELIEF

The Plaintiff Carpenters Trusts respectfully request the Court grant the following:

- A. Judgment in favor of the Carpenters Trusts against Commercial Insulation Service, LLC, in an amount to be determined at trial, but not less than \$43,383.07, representing past-due and delinquent fringe benefit contributions owed by defendant pursuant to the terms of the labor and trust agreements to which CIS is a party, for the period January 1, 2015 through December 31, 2017;
 - B. Judgment in favor of the Carpenters Trusts against Commercial Insulation Service, LLC, in an amount to be determined at trial, but not less than \$5,205.96, representing liquidated damages owed by defendant pursuant to the terms of the labor and trust agreements to which CIS is a party, for the period January 1, 2015 through December 31, 2017;
 - C. Judgment in favor of the Carpenters Trusts against Commercial Insulation Service, LLC, in an amount to be determined at trial, but not less than \$9,865.71, representing accrued prejudgment interest owed by defendant pursuant to the terms of the labor and trust agreements to which CIS is a party, for the period January 1, 2015 through December 31, 2017;
 - D. An award of attorney fees of not less than \$5,000.00, plus costs of collection, as authorized by the labor and trust agreements to which Commercial Insulation Service, LLC is a party, and as authorized under ERISA;
 - E. Entry of an injunction against Commercial Insulation Service, LLC, permanently enjoining CIS from further violations of ERISA, as set forth above; and
 - F. Any other such relief under federal law or as is just and equitable.

Dated: November 19, 2018.

s/ Jeffrey G. Maxwell
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